

EXHIBIT 114

DEPARTMENTAL DISCIPLINARY COMMITTEE
FIRST JUDICIAL DEPARTMENT
SUPREME COURT - APPELLATE DIVISION

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In the Matter of:

RP #2018.7008

STEVEN DONZIGER

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61 Broadway
New York, New York 10006
Monday, September 16, 2019

BEFORE: JOHN HORAN, REFEREE

APPEARANCES:

For the Departmental Disciplinary Committee
First Judicial Department:

61 Broadway
2nd Floor
New York, New York 10006

BY: NAOMI GOLDSTEIN, ESQ.
GEORGE DAVIDSON, ESQ.

For the Respondent:

RICHARD FRIEDMAN, ESQ.
MARTIN GARBUS, ESQ.
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1 PAGE - CROSS (by Davidson)

2 percent of any eventual recovery.

3 MR. DAVIDSON: And when was that?

4 THE WITNESS: I don't have the exact date
5 but it was about two years ago.

6 MR. DAVIDSON: November of '17 ring a bell?

7 THE WITNESS: That would be about two years
8 ago, yeah.

9 MR. DAVIDSON: And did you enter into an
10 agreement with the FDA at that time to
11 represent them? You said you had a retainer
12 with the FDA a couple of years ago.

13 THE WITNESS: Yeah, I mean the FDA has been
14 around since the beginning of the case. I mean
15 every time I go to Ecuador I'm meeting with my
16 clients, so yeah.

17 MR. DAVIDSON: I'm just trying to
18 understand when the retainer agreement was
19 entered into in relation to the .25 percent
20 interest?

21 THE WITNESS: Right, so that was an effort
22 to clarify arrangements and so forth. So I
23 think the same retainer agreement which
24 provided some degree of authorization also
25 provided that .25 percent both as an incentive

1 PAGE - CROSS (by Davidson)

2 for future work and compensation for past work.

3 MR. DAVIDSON: Mr. Donziger has at one
4 point or another said that the nominal present
5 value, or the nominal value with interest of
6 the judgement is like \$12 billion, would you
7 agree with that?

8 THE WITNESS: Well, yeah, that figure, you
9 take the face value --

10 MR. DAVIDSON: The face value of that,
11 number of years interest and so --

12 THE WITNESS: Yeah, and then add interest
13 to it, for sure.

14 MR. DAVIDSON: Even if we take a little
15 haircut and call it \$11 billion, .25 of a
16 percent doesn't sound like very much, but were
17 that to come through you would get \$27.5
18 million, is that right?

19 THE WITNESS: So in a context where every
20 penny of the Ecuadorian judgment is covered,
21 yes.

22 MR. DAVIDSON: And so to the extent that
23 any taint is removed from Mr. Donziger and it
24 becomes more likely that the judgement was
25 collected, that's good for you?

1 PAGE - CROSS (by Davidson)

2 THE WITNESS: Yes.

3 MR. DAVIDSON: You were also involved in
4 fundraising, assisting Mr. Donziger in
5 fundraising?

6 THE WITNESS: Yes, I assisted him, yes.

7 MR. DAVIDSON: And for several instances of
8 funding the investment by the funders went to
9 the, first to the Canadian firm that's handling
10 the enforcement proceeding there, is that
11 correct?

12 THE WITNESS: Yeah, I think it varied per
13 the terms of each, you know, fundraising deal.
14 But yeah, I mean a lot of the fundraising was
15 for the purpose of supporting this litigation
16 in Canada and paying this Canadian lawyer.

17 MR. DAVIDSON: Right. And in a number of
18 instances, monies from those investments came
19 back to Mr. Donziger?

20 THE WITNESS: Yeah, that's my
21 understanding.

22 MR. DAVIDSON: In late 2017 or thereabouts,
23 there was a couple of fundraising investments
24 that were obtained where Mr. Lenczner was
25 effectively cut out and the money only went to

1 PAGE - CROSS (by Davidson)

2 Mr. Donziger, do you recall that?

3 THE WITNESS: So no, not really, there were
4 five or six different investments. I mean I'm
5 not sure what cut out means, they were, there
6 was, I think what you're referring to, right,
7 is there was a role played by Mr. Lenczner and
8 his firm in some deals and then not in others,
9 and that's true.

10 MR. DAVIDSON: There's an email that you
11 wrote which talks about cutting out Mr.
12 Donziger, I think I got that word write, and
13 you said where we cut out Alan because, yeah.
14 Now at that time that Alan did not participate
15 in the fundraising, that no many went to
16 Canadian counsel, Canadian counsel still had
17 active litigation to enforce the judgment,
18 right?

19 THE WITNESS: They had, yes, I mean --

20 MR. DAVIDSON: And neither you nor Mr.
21 Donziger had any client in that litigation
22 because Mr. Donziger ceased to represent the 47
23 Lago Agrio plaintiffs a couple of years before
24 that?

25 THE WITNESS: No, that's not quite

1 PAGE - CROSS (by Davidson)

2 accurate.

3 MR. DAVIDSON: Well straighten it out.

4 THE WITNESS: Right, so the plaintiff side
5 of an enforcement action is complicated by the
6 fact that it's a popular action in Ecuador. So
7 while there were named plaintiffs, they were,
8 their status of beneficiaries of the judgment
9 was always somewhat unclear because they were
10 collective environmental claims, further
11 complicated by the fact that following the
12 Appellate Division, the Appellate decision in
13 Ecuador, they assigned, as directed by the
14 Court, the individuals assigned their interests
15 into a trust in Ecuador and the named
16 beneficiary of the trust is de Frente de
17 Defensa. And all it is is in public documents.
18 And so, you know, and then there's proceedings
19 in Canada that were initiated at one time and
20 different things have changed.

21 So it's not exactly clear. Now there are
22 other issues related to who, you know, there
23 have been some contests regarding relationships
24 with clients in Ecuador and so it's, my
25 understanding is that there are, you know,

1 PAGE - CROSS (by Davidson)

2 there's one group that would represent some
3 plaintiffs, another group that would represent
4 other plaintiffs. There's also de Frente de
5 Defensa that has a legitimate role in enforcing
6 the judgment as the beneficiary under the trust
7 and so forth, has its own interest, so it's
8 fairly complicated. But we certainly were very
9 involved in that litigation, very, very
10 involved.

11 MR. DAVIDSON: Now isn't it true that the
12 counsel for the 47 plaintiffs in Ecuador who
13 signed the retainer, (indiscernible) retainer
14 agreement, has called you, Mr. Donziger and Mr.
15 Johnson, not you, sorry, as running a scam by
16 selling these interests in the judgment?

17 THE WITNESS: So, yeah, not unlike a lot of
18 collective actions, there are rivalries and at
19 this point there's an individual who has chosen
20 to, you know, advance his own interests and his
21 own control and he does so in part by attacking
22 Mr. Donziger --

23 MR. DAVIDSON: That's funny, because that's
24 the same thing they claim of Mr. Donziger, that
25 he's advancing his own interests.

1 PAGE - CROSS (by Davidson)

2 THE WITNESS: Yeah, it's a, I mean it is
3 what it is.

4 MR. DAVIDSON: But at the time this money
5 came in in these last two fundraising events,
6 you had no litigation to fund and the money
7 really supported Mr. Donziger for the most
8 part, paid his mortgage.

9 THE WITNESS: You know, I would certainly
10 disagree with that. I wish we were in a place
11 where we had no litigation to fund but there
12 was lots of litigation, there were lots of
13 demands on that money from all over the place.
14 I mean to the extent, there's references to the
15 fact that the money no longer went to Mr.
16 Lenczner's firm, you know, the early, my
17 understanding of it roughly is that the early
18 investments were to shore him up because that
19 was absolutely critical that that happened, and
20 the vast majority of the funds went to Mr.
21 Lenczner's firm. As he was paid up, as his
22 retainer was paid up and he was able to keep
23 working, then other priorities were addressed
24 with different fundraising agreements.

25 MR. DAVIDSON: The other priorities, seem

1 PAGE - CROSS (by Davidson)

2 to be from the record, to pay Mr. Donziger's
3 mortgage and his child's school tuition and
4 things like that.

5 THE WITNESS: Well he's a paid attorney on
6 the case, as well, yeah, so it was to pay his
7 fees which he then chooses to, he then may
8 choose to use his income to pay his mortgage
9 and his child's school fees. He certainly was
10 entitled to fees under his own retainer
11 agreement, as well.

12 THE REFEREE: Mr. Davidson, which period
13 are we in, is this collection period on the
14 judgment?

15 MR. DAVIDSON: Yeah, this is a period at
16 the, let me just find my chronology here. At
17 the end of, this is in late '17 we're talking
18 about.

19 THE REFEREE: Okay.

20 MR. DAVIDSON: In late '17, this is after
21 the Supreme Court had denied cert, it's, in
22 fact, after the motion to suspend in the
23 Appellate Division. And at that time the
24 actions, such as it was, litigation on behalf
25 of people that live in Ecuador, was in Canada.

1 PAGE - CROSS (by Davidson)

2 And there was no litigation in which Mr.
3 Donziger, other than defending himself there is
4 no litigation in which he was representing
5 Ecuadorians when he might raise these other
6 funds.

7 THE REFEREE: Okay.

8 MR. DAVIDSON: That's my point and I think
9 I made it.

10 THE REFEREE: So he was raising money at
11 the time basically for himself is what you're
12 saying.

13 MR. DAVIDSON: That's the point, yeah.
14 Okay, I have no further questions at this time.

15 THE REFEREE: Any redirect, Mr. Freidman?

16 REDIRECT EXAMINATION

17 BY MR. FREIDMAN:

18 MR. FREIDMAN: Have you seen Mr. Donziger
19 in your view do anything improper with the
20 money that he's raised?

21 THE REFEREE: Well maybe you should
22 rephrase that, what does that mean?

23 MR. FREIDMAN: What did that mean? I mean,
24 what did we just hear, discovery for Chevron in
25 the post judgment proceeding or we're

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C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the State of New York, County of New York, was prepared using PC-based transcribing software and is a true and accurate record of the proceedings.

Signature Carole Ludwig

Date: September 20, 2019